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Attorneys for USACM Liquidating Trust

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE
COMPANY,USA CAPITAL REALTY ADVISORS,
LLC,USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,USA CAPITAL FIRST TRUST DEED
FUND, LLC,¹USA SECURITIES, LLC,²

Debtors.

USACM Liquidating Trust,

Plaintiff,

vs.

Los Valles Land & Golf, LLC, a Delaware
Limited Liability Company,

Defendant.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR¹
Case No. BK-S-06-10729-LBR²

Chapter 11 Cases

Jointly Administered Under Case No.
BK-S-06-10725 LBR

Judge Linda B. Riegle Presiding

**USACM LIQUIDATING TRUST'S
ADVERSARY COMPLAINT
AGAINST LOS VALLES LAND &
GOLF, LLC**

Adv. No. _____

For its adversary complaint against Los Valles Land & Golf, LLC ("Los Valles"),
the USACM Liquidating Trust (the "USACM Trust") alleges as follows:

¹ This bankruptcy case was closed on October 12, 2007.

² This bankruptcy case was closed on December 26, 2007.

JURISDICTION AND PARTIES

1. USA Commercial Mortgage Company (“USACM”) is a Nevada corporation.

2. Los Valles is a Delaware limited liability company.

3. Dan S. Palmer is a resident and citizen of California.

4. On April 13, 2006 (“Petition Date”), USACM, USA Capital Realty Advisors, LLC (“USA Realty”), USA Capital Diversified Trust Deed Fund, LLC (“DTDF”), USA Capital First Trust Deed Fund, LLC (“FTDF” and together with DTDF, the “Funds”), and USA Securities, LLC (“USA Securities”) (collectively the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Management duties of USACM were conducted by Thomas J. Allison of Mesirow Financial Interim Management, LLC (“Mesirow”) who serves as the President and Chief Restructuring Officer.

5. On January 8, 2007, this Court entered its Order Confirming the “Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization” as Modified Herein (the “Confirmation Order”) confirming Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization (the “Plan”).

6. Under the Plan, the USACM Liquidating Trust is the successor to USACM with respect to standing to seek allowance and disallowance of Claims and to recover the assets of USACM not otherwise disposed of under the Plan, including the causes of action asserted here.

7. The USACM Trust exists as a Nevada business trust as of the Effective Date of the Plan, which was March 12, 2007.

8. Los Valles filed its proof of claim, assigned Claim No. 10725-01366, on November 13, 2006. USACM filed its First Amended Objection to that claim on September 20, 2007. This adversary complaint closely relates to the proof of claim and the Court may exercise jurisdiction over it under 28 U.S.C. § 1334(b). The adversary

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1 complaint is related to the USACM bankruptcy case and is a core proceeding under 28
2 U.S.C. § 157(b)(2)(C), (O).

3 9. The statutory predicate for the relief requested herein is 11 U.S.C. § 502 and
4 Bankruptcy Rules 3007 and 7001.

5 10. The USACM Trust asserts claims against Los Valles that were property of
6 the USACM estate, and are now owned by the USACM Trust pursuant to the confirmed
7 Plan of Reorganization and will be used to pay creditors' claims. The USACM Trust
8 consents to this Court's entry of final orders in this adversary proceeding.

9 11. To the extent that this adversary complaint is not "related to" the USACM
10 case, this Court may exercise supplemental jurisdiction over the claims under 28 U.S.C.
11 § 1367 to the extent that the claims are so related to Los Valles' loan and USACM's
12 objection to that claim that they arise out of the same case or controversy as the matters
13 within this Court's § 1334(b) jurisdiction.

14 12. Alternatively, this is a suit between citizens of separate states where the
15 amount in controversy exceeds \$75,000 over which the district court may exercise
16 diversity jurisdiction, and which this Court may exercise under the District's general order
17 of reference.

18 **GENERAL ALLEGATIONS**

19 13. USACM originated loans for borrowers and solicited the funding of such
20 loans from numerous individuals and entities (collectively, the "Direct Lenders"). Upon
21 information and belief, with few exceptions, USACM originated loans that provided for a
22 mandatory initial funding amount with any additional funding to be made solely at the
23 discretion of the Direct Lenders. Upon further information and belief, when USACM
24 arranged an increase in the original loan amount, USACM solicited the existing Direct
25 Lenders in the original loan for the additional funds. Absent the affirmative decision by
26 the Direct Lenders to invest additional funds, the original loan would not be increased.

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1 14. On March 3, 2004, Los Valles and USACM entered into a Loan Agreement
2 whereby USACM arranged a loan to Los Valles of \$11,700,000. The Loan Agreement
3 provided that USACM was entitled to receive interest in the amount of 18% annually, an
4 Exit Fee of 1.5% of the gross sale price of lots to be paid at the time each lot closed, and
5 Loan Extension fees, among other fees. The Loan Agreement provided Nevada law
6 applied to the interpretation of the Loan Agreement without regard to Nevada choice of
7 law provisions. The Loan Agreement also provided that Los Valles submitted to
8 jurisdiction in Nevada and agreed that any action relating to the Loan Agreement may be
9 brought in Nevada.

10 15. On March 3, 2004, Los Valles and USACM entered into a Fee Agreement
11 providing for a Loan Fee of 5% to be paid to USACM. The Fee Agreement provided it
12 was to be governed by Nevada law.

13 16. On October 6, 2006, USACM, Los Valles, and Dan S. Palmer entered into a
14 letter agreement (the "Letter Agreement"). The Letter Agreement provided that it was
15 governed by the internal laws of Nevada. A true and accurate copy of the Letter
16 Agreement is attached hereto as Exhibit A.

17 17. The Letter Agreement provided for the following sums to be paid by Los
18 Valles to USACM: the sum of \$586,045.83 plus any applicable Per Diem Amounts and
19 other fees no later than December 31, 2007; an amount equal to 1% of the gross proceeds
20 from the sale of residential lots, or an "Earnout Rate" determined under the formula in
21 paragraph 4(C) of the Letter Agreement; additional Per Diem Amounts as defined in the
22 Letter Agreement; and interest on certain fees to which USACM is entitled under the
23 Letter Agreement.

24 18. Palmer personally guaranteed payment to USACM of the amounts due under
25 the Letter Agreement, no later than December 31, 2007.

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any applicable Per Diem Amounts, Earnout Rate fees or deferred extension fees, attorneys' fees and costs, and any other fees available under the Letter Agreement.

WHEREFORE the USACM Trust requests judgment against Los Valles as follows:

A. Awarding the USACM Trust compensatory damages arising out of Los Valles' breach and repudiation of the Letter Agreement in an amount to be determined at trial;

B. Awarding the USACM Trust prejudgment interest;

C. Awarding the USACM Trust its reasonable attorneys' fees and costs under the Letter Agreement; and

D. Awarding the USACM Trust any other relief the Court deems just and proper.

RESPECTFULLY SUBMITTED this 26th day of February, 2008.

LEWIS AND ROCA LLP

By /s/ RC (#0006593)
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Rob Charles
John Hinderaker (*pro hac vice*)
Attorneys for USACM Liquidating Trust